



I hereby certify that this correspondence is being deposited with the U.S. Postal Service with sufficient postage as First Class Mail, in an envelope addressed to: MS Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date shown below.

Dated: November 7, 2005

Signature:

*Patricia Tedesco*  
(Patricia Tedesco)

Docket No.: BBNT-P01-138  
(PATENT)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of:  
James E. Barger

Application No.: 10/713499

Confirmation No.: 1205

Filed: November 14, 2003

Art Unit: 2856

For: GEOPHONE

Examiner: S. J. M. Saint

**RESPONSE TO RESTRICTION REQUIREMENT**

MS Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

In response to the restriction requirement set forth in the Office Action mailed October 5, 2005 (Paper No. 20050929), applicant hereby provisionally elects claims 1-2, 6-8, and 11-49, for continued examination, with traverse.

The Examiner has required restriction between Species I, including claims 3-10, allegedly drawn to closed-cell foam and Species II, including claims 15-23 and 34-41, allegedly drawn to a fluid disposed between a shell and a case. The remaining claims are not classified within either Species.

According to MPEP § 803, there are two criteria for a proper requirement for restriction between patentably distinct inventions: the inventions must be independent, and there would be a serious burden on the examiner if restriction is not required. Furthermore, "Examiners must provide reasons and/or examples to support conclusions...to support the restriction requirement in most cases." MPEP §803(II). The MPEP continues: "For purposes of the initial requirement, a serious burden on the examiner may be *prima facie* shown by appropriate explanation of separate classification, or separate status in the art, or a different field of search as defined in MPEP § 808.02." The pending Restriction Requirement fails to provide any such reasons or examples to support the conclusion that the examining all of the claims together would be a serious burden. Thus, the Restriction Requirement fails to meet the guidelines for requiring

restriction. Applicant therefore requests reconsideration and withdrawal of the restriction requirement.

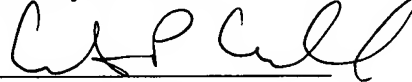
Furthermore, the alleged species of the invention are not mutually exclusive. To the contrary, as described in paragraphs [0019] and [0022], relating to Figure 1, of the Application, the disposition of a fluid between the shell and the case of a geophone (asserted species I) may be, and preferably is, used in conjunction with a suspension comprising closed-cell foam (asserted species II). More particularly, Figure 1 depicts a geophone. Paragraph [0019] states that the preferred embodiment of that geophone includes a suspension 104, which is "preferably a cylindrical jacket of closed-cell foam." Paragraph [0022] further indicates that, while not required, the preferred embodiment of the geophone also includes fluid disposed between the shell and case of the geophone. Therefore, the two features, i.e., closed-cell foam and fluid, do not constitute distinct species of the invention which need to be examined separately. For these additional reasons, Applicant requests reconsideration and withdrawal of the restriction requirement placed on the application.

Should the Examiner maintain that the claims must be restricted, Applicant notes that claims 6-8, included in Species I, depend from claim 1 and make no mention of closed-cell foam. Thus, claims 6-8 fall outside of the alleged Species I.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 18-1945, under Order No. BBNT-P01-138 from which the undersigned is authorized to draw.

Dated: November 7, 2005

Respectfully submitted,

By 

Christopher Paul Carroll

Registration No.: 55,776

ROPES & GRAY LLP

One International Place

Boston, Massachusetts 02110-2624

(617) 951-7000

(617) 951-7050 (Fax)

Attorneys/Agents For Applicant